

IN THE SUPREME COURT FOR THE STATE OF OKLAHOMA

OKLAHOMA DEPARTMENT OF)
 SECURITIES *ex rel.*, IRVING L.)
 FAUGHT, ADMINISTRATOR,)
)
 Plaintiff/Appellee,)
)
 v.)
)
 ACCELERATED BENEFITS)
 CORPORATION; C. KEITH)
 LaMONDA; AMERICAN TITLE)
 COMPANY OF ORLANDO; and)
 DAVID PIERCEFIELD,)
)
 Defendants/Appellants,)
)
 v.)
)
 TOM MORAN,)
)
 Court Appointed Conservator/Appellee.)

FILED
SUPREME COURT
STATE OF OKLAHOMA
 DEC 20 2002
 MICHAEL S. RICHIE
 CLERK

Case No. 98663
 # **98663**
 (District Court Case No. CJ-99-2500-66)

FILED IN THE DISTRICT COURT
 OKLAHOMA COUNTY, OKLA.

DEC 20 2002

PATRICIA PRESLEY, COURT CLERK
 by _____
 Deputy

PETITION IN ERROR

- PETITION IN ERROR
- AMENDED OR SUPPLEMENTAL PETITION
- CROSS PETITION
- COUNTER-PETITION
- DATE FIRST PETITION IN ERROR FILED: _____

I. TRIAL COURT HISTORY

COURT/TRIBUNAL: District Court of Oklahoma County
 COUNTY: Oklahoma
 CASE NO.: CJ-99-2500-66
 JUDGE: The Honorable Daniel L. Owens
 NATURE OF CASE: Securities Fraud
 (e.g., Divorce, Personal Injury).

NAME OF PARTY OR PARTIES FILING THIS PETITION IN ERROR:
 Accelerated Benefits Corporation; C. Keith LaMonda; American Title Company of
 Orlando; and David Piercefield

THE APPEAL IS BROUGHT FROM: (Check one)
 Judgment, Decree or Final order of District Court.

- Appeal from order granting summary judgment or motion to dismiss where motion filed after October 1, 1993 (Accelerated procedure under Rule 1.36).
- Appeal from Revocation of Driver's License
(Rule 1.21(b)).
- Final Order of Other Tribunal.
(Specify Corporation Commission, Insurance Department, Tax Commission, Court of Tax Review, Banking Board or Banking Commissioner, etc.)
- Interlocutory Order Appealable by Right.
- Other

II. TIMELINESS OF APPEAL

1. Date judgment, decree or order appealed was filed: November 20, 2002
2. *If decision was taken under advisement*, date judgment, decree or order was mailed to parties: Not Applicable
3. Does the judgment or order on appeal dispose of *all* claims by and against *all* parties?
 Yes No.
 If not, did district court direct entry of judgment in accordance with 12 O.S. 1991 § 994?
 Yes No.
 When was this done? N/A
4. If the judgment or order is not a final disposition, is it appealable because it is an Interlocutory Order Appealable by Right? Yes No.
5. If none of the above applies, what is the *specific* statutory basis for determining the judgment or order is appealable? 12 O.S. 2001 § 993(A)(7)
6. Were any post-[order] motions filed? No.

<u>Type</u>	<u>Date Filed</u>	<u>Date Disposed</u>
-------------	-------------------	----------------------
7. This Petition is filed by:
 Delivery to Clerk, or
 Mailing to Clerk by U.S. Certified Mail, Return Receipt Requested, on _____ (Date)

III. RELATED OR PRIOR APPEALS

List all prior appeals involving same parties or same trial court proceeding: *Accelerated Benefits Corporation, American Title Company of Orlando vs. The Honorable Daniel L. Owens, Judge of the District Court of Oklahoma County, Oklahoma, Supreme Court of the State of Oklahoma, Case No. 98,083*

List all related appeals involving same issues: *(Identify by Style, Appeal Number, Status, and Citation, if any. If none, so state.)* None

IV. SETTLEMENT CONFERENCE

Is Appellant willing to participate in an attempted settlement of the appeal by predecisional conference under Rule 1.250? Yes No

V. RECORD ON APPEAL

- A Transcript has been ordered.
- No Transcript will be ordered because no record was made and/or no transcript will be necessary for this appeal
- A Narrative Statement will be filed
- Record is concurrently filed as required by Rule 1.34 (Driver's License Appeals, etc.) or Rule 1.36 (Summary judgments and motions to dismiss granted).

VI. JUDGMENTS, DECREES OR ORDERS APPEALED—EXHIBITS "A"

(See Exhibit "A")

VII. SUMMARY OF CASE—EXHIBIT "B"

(See Exhibit "B")

VIII. ISSUES TO BE RAISED ON APPEAL—EXHIBIT "C"

(See Exhibit "C")

IX. NAME OF COUNSEL OR PARTY, IF PRO SE

ATTORNEYS FOR APPELLANTS:

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William H. Whitehill, OBA No. 12038
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BAILEY & TIPPENS
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ATTORNEYS FOR APPELLEE:

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Oklahoma City, OK 73102

Attorneys for Oklahoma Department of Securities

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Attorneys for Conservator, Tom Moran

DATE: December 20, 2002.

Verified by:



Dino E. Viera, OBA No. 11556
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Facsimile: (405) 232-9659

Attorneys for Defendant/Appellant
Accelerated Benefits Corporation

X. CERTIFICATE OF MAILING TO ALL PARTIES AND COURT CLERK

I hereby certify that a true and correct copy of the Petition in Error was mailed this 20 day of December, 2002, by depositing it in the U.S. Mails, postage prepaid, to:

Melvin R. McVay, Jr., OBA #6096
Thomas P. Manning, OBA #16117
PHILLIPS McFALL McCAFFREY
McVAY & MURRAH, P.C.
Twelfth Floor, One Leadership Square
211 N. Robinson
Oklahoma City, OK 73102

Patricia A. Labarthe, Esq.
Oklahoma Department of Securities
First National Center, Suite 860
120 North Robinson
Oklahoma City, OK 73102

I further certify that a copy of the Petition in Error of Accelerated Benefits Corporation was mailed to, or filed in, the Office of the Court Clerk of the District Court of Oklahoma County on the 20 day of December, 2002.



Dino E. Viera

182591.1

EXHIBIT "A"

IN THE DISTRICT COURT OF OKLAHOMA COUNTY
STATE OF OKLAHOMA

Oklahoma Department of Securities
ex rel. Irving L. Faught, Administrator

Plaintiff,

v.

Accelerated Benefits Corporation, a Florida
corporation, et al.,

Defendants.

FILED IN THE DISTRICT COURT OF OKLAHOMA COUNTY, OKLA.
 NOV 27 2002
 PATRICIA PRESLEY, COURT CLERK
 Deputy
 Case No. CI-99-2500
 Judge Darrell L. Owens

JOURNAL ENTRY

This matter comes on for hearing this 27th day of September, 2002, before the undersigned Judge of the District Court in and for Oklahoma County, State of Oklahoma, on Defendants' Motion to Enforce or, Alternatively Construe the Court's Order Appointing Conservator and Transferring Assets ("Defendants' Motion"). Conservator, Tom Moran, appeared in person and through counsel, Thomas Manning of the law firm Phillips McFall McCaffrey McVay & Murrah, P.C.. Defendants Accelerated Benefits Corporation ("ABC"), C. Keith LaMonda, American Title Company of Orlando ("ATCO") and David Piercefield (collectively "Defendants"), appeared by and through counsel, Dino Viera of the law firm, Fellers, Snider, Blankenship, Bailey and Tippens, P.C.. The Oklahoma Department of Securities, ex rel. Irving L. Faught, Administrator (the "Department") appears by and through its attorney, Patricia A. Labarthe. The Court, having reviewed all of the evidence offered, hearing argument of counsel, and being fully advised in the premises finds as follows:

- (a) The Order Appointing Conservator and Transferring Asset dated February 6th, 2002 (the "Conservatorship Order") is clear and unambiguous;

(b) ABC participated in the drafting and agreed to the terms of the Conservatorship Order in lieu of restitution;

(c) Under the Conservatorship Order, ABC is obligated to pay all costs and expenses of the Conservatorship, including premium shortfalls, Conservator's fees and expenses, and attorney's fees, until seventy-five percent (75%) of the Conservatorship Assets, as defined by the Conservatorship Order, are transferred to the Conservator;

(d) To date there has been no determination that seventy-five percent (75%) of the Conservatorship Assets, as defined by the Conservatorship Order, have been transferred to the Conservator;

(e) The parties have agreed have beginning October 1, 2002, the Conservator will be responsible for the compensation of ABC employees utilized by the Conservator;

(f) The parties have agreed that Conservator will make a reasonable effort to ensure timely disbursement of all proceeds from matured policies within 30 days of receipt;

(g) The parties have agreed that prior to November 1, 2002, ABC will ensure that all premiums are paid current;

(h) The parties have agreed that Defendants will turn over all funds currently being held in any accounts which contain funds from any investor or policy subject to the Conservatorship Order;

(i) The parties have agreed that beginning November 1, 2002, the Conservator will assume the responsibility to collect, pay and administer the collection and payment of all premiums, and will maintain all records of premium collections, payments, Conservator expenses, billings, etc.;

(j) The parties have agreed that the Conservator will continue to open bank accounts for the deposit of collected premiums and will sign legal documents on behalf of and in the name of the Conservatorship;

(k) The parties have agreed that the Conservator will continue to maintain proper accounting and documentation of all aspects of the Conservatorship;

(l) The parties have agreed an independent auditor, acceptable to the parties, will be retained at ABC's expense, pursuant to the terms of an engagement letter to be agreed to by the parties; and

(m) The Court will make a future determination of any amounts to be reimbursed to ABC for amounts advanced for payment of premiums for which investor funds have been collected.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that:

(a) ABC shall continue to be obligated to pay all costs and expenses of the Conservatorship, including premium shortfalls, Conservator's fees and expenses, and attorney's fees, until seventy-five percent (75%) of the Conservatorship Assets, as defined by the Conservatorship Order, are transferred to the Conservator;

(b) Beginning October 1, 2002, the Conservator will assume the responsibility for the compensation of ABC employees utilized by the Conservator;

(c) The Conservator shall make a reasonable effort to ensure timely disbursement of all proceeds from matured policies within 30 days of receipt;

(d) Prior to November 1, 2002, ABC shall ensure that all premiums are paid current, and that no policies are in lapse status or within a grace period;

(e) Defendants shall turn over all funds currently being held in any accounts which contain funds from any investor or policy subject to the Conservatorship Order;

(f) On November 1, 2002, the Conservator shall assume the responsibility to collect, pay and administer the collection and payment of all premiums, and will maintain all records of premium collections, payments, Conservator expenses, billings, etc.;

(g) The Conservator shall continue to open bank accounts for the deposit of collected premiums and will sign legal documents on behalf of and in the name of the Conservatorship;

(h) The Conservator shall continue to maintain proper accounting and documentation of all aspects of the Conservatorship;

(i) An independent auditor, acceptable to all parties, shall be selected and retained at ABC's expense, to conduct an audit pursuant to the terms of an engagement letter to be agreed to by the parties; and

(j) The Court will make a future determination of any amounts to be reimbursed to ABC for amounts advanced for payment of premiums for which investor funds have been collected.

Dated this 20th day of November, 2002.



JUDGE OF THE DISTRICT COURT

I, PATRICIA PRESLEY, Court Clerk for Oklahoma County, Okla., hereby certify that the foregoing is a true, correct and complete copy of the instrument herewith set out as appears of record in the District Court Clerks Office of Oklahoma County, Okla., this 19 day of December, 2002

By Patricia Presley Deputy
PATRICIA PRESLEY, Court Clerk

APPROVED:

Patricia A. Labarthe

Patricia A. Labarthe, #10391

Oklahoma Department of Securities

120 North Robinson, Suite 860

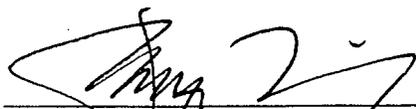
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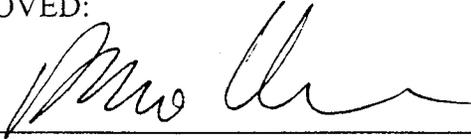
Attorney for Oklahoma Department of Securities

APPROVED:



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Attorneys for Accelerated Benefits Corporation,
American Title Company of Orlando,
Keith LaMonda and David Piercefield

IN THE DISTRICT COURT OF OKLAHOMA COUNTY
STATE OF OKLAHOMA

Oklahoma Department of Securities
ex rel. Irving L. Faught, Administrator,

FILED IN THE DISTRICT COURT
OKLAHOMA COUNTY, OKLA.
NOV 27 2002
PATRICIA PRESLEY
Deputy
Case No. CJ-99-2500
Judge Daniel L. Owens

v.

Accelerated Benefits Corporation, a Florida
corporation, et al.,

Defendants.)

JOURNAL ENTRY

This matter comes on for hearing this 27th day of September, 2002, before the undersigned Judge of the District Court in and for Oklahoma County, State of Oklahoma, on Conservator's Motion For Order Assessing Conservator's Expenses Against Defendants And Compelling Defendants To Comply With The Conservatorship Order (the "Conservator's Motion"). Conservator, Tom Moran, appeared in person and through counsel, Thomas Manning of the law firm Phillips McFall McCaffrey McVay & Murrah, P.C.. Defendants Accelerated Benefits Corporation, C. Keith LaMonda, American Title Company of Orlando and David Piercefield (~~collectively "ABC"~~), appeared by and through counsel, Dino Viera of the law firm, Fellers, Snider, Blankenship, Bailey and Tippens, P.C.. The Oklahoma Department of Securities, ex rel. Irving L. Faught, Administrator (the "Department") appears by and through its attorney, Patricia A. Labarthe. The Court, having reviewed all of the evidence offered, hearing argument of counsel, and being fully advised in the premises finds as follows:

- (a) The Order Appointing Conservator and Transferring Asset dated February 6th, 2002 (the "Conservatorship Order") is clear and unambiguous;

(b) ABC participated in the drafting and agreed to the terms of the Conservatorship Order in lieu of restitution;

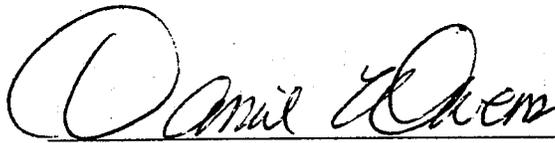
(c) Under the Conservatorship Order, ABC is obligated to pay all costs and expenses of the Conservatorship, including premium shortfalls, Conservator's fees and expenses, and attorney's fees, until seventy-five percent (75%) of the Conservatorship Assets, as defined by the Conservatorship Order, are transferred to the Conservator;

(d) To date there has been no determination that seventy-five percent (75%) of the Conservatorship Assets, as defined by the Conservatorship Order, have been transferred to the Conservator; and

(e) A policy will be deemed to have been transferred upon receipt by the Conservator of a confirmation from the insurance company acknowledging the change of beneficiary or ownership of the policy to the Conservator.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the Counservator's Motion is granted and Accelerated Benefits Corporation is ordered to pay to the Conservator all Conservator fees, expenses and attorney's fees approved by the Court to date within 30 days.

Dated this 20th day of November, 2002.



JUDGE OF THE DISTRICT COURT

I, PATRICIA PRESLEY, Court Clerk for Oklahoma County, Okla., hereby certify that the foregoing is a true, correct and complete copy of the instrument herewith set out as appears of record in the District Court Clerks Office of Oklahoma County, Okla., this 19 day of December, 2002
PATRICIA PRESLEY, Court Clerk
By [Signature] Deputy

APPROVED:

Patricia A. Labarthe

Patricia A. Labarthe, #10391

Oklahoma Department of Securities

120 North Robinson, Suite 860

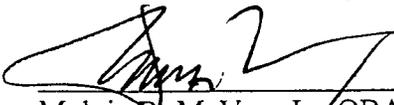
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APPROVED:



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Attorneys for Conservator, Tom Moran

APPROVED:



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Attorneys for Accelerated Benefits Corporation,
American Title Company of Orlando,
Keith LaMonda and David Piercefield

EXHIBIT "B" - SUMMARY OF THE CASE

This action was brought by the Oklahoma Department of Securities ("Department") against various defendants, including appellants. The Department alleged, *inter alia*, that appellants had engaged in securities fraud in violation of the Oklahoma Securities Act. The trial court entered judgment in favor of the Department. Thereafter, pursuant to an agreement of the parties, an "Order Appointing Conservator and Transfer of Assets" was entered by the trial court. The Conservatorship Order appointed Tom Moran as Conservator of various assets of appellants, Accelerated Benefits Corporation ("ABC") and American Title Company of Orlando ("ATCO"). The order also imposed various duties and obligations on the Conservator and ABC.

Several months after the entry of the Conservatorship Order, appellants and the Conservator filed cross-motions asking the trial court to interpret certain provisions of Conservatorship Order and to enforce the order as construed. On November 20, 2002, the district court disposed of the parties cross-motions. It is from these orders that appellants bring this appeal. The journal entries have, in effect, reopened and modified the terms of the Conservatorship Order. The trial court's interpretation of the Conservatorship Order imposes new and unintended obligations on ABC and ATCO. The journal entries should be reversed.

EXHIBIT "C" - ISSUES ON APPEAL

1. Whether the Conservatorship Order is clear and unambiguous.
2. Whether the Conservatorship Order obligated ABC to pay all costs and expenses of the Conservatorship, including premiums, Conservator fees and expenses, and attorney fees, until 75% of the Conservatorship assets; as defined by the Conservatorship Order, are transferred to the Conservator.
3. Whether 75% of the life insurance policies, which constitute the bulk of the Conservatorship assets, are deemed transferred to the Conservator upon the preparation and submission of change of beneficiary forms or upon the insurance company's acknowledgment of receipt and change of beneficiary.
4. Whether the Conservatorship Order was properly construed to require payment of premiums by ABC prior to the transfer of 75% of the Conservatorship assets.
5. Whether additional assets left with the Conservator at the inception of the Conservatorship, above and beyond insurance policies and premium accounts, may be used or considered to have satisfied ABC's obligations to pay the Conservatorship fees and expenses prior to transfer 75% of the Conservatorship assets.
6. Whether the district court properly construed its previous Conservatorship Order.

7. Whether ABC should be reimbursed for premium payments which it advanced both prior and subsequent to the entry of the Conservatorship Order.

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